CAL-EPA

COVINGTON & BURLING

March 28, 1996

MEMORANDUM TO THE COMMITTEE OF COUNSEL

Re: California EPA Environmental Tobacco Smoke (ETS) Risk Assessment

On March 25, Cal-EPA held a public workshop in Berkeley, California on the final draft chapter of its ETS risk assessment, which addresses ETS and lung cancer. Five industry witnesses presented testimony at the workshop, including Drs. Layard, LeVois and Gori on behalf of TI, and Drs. William Butler and Susan Rice on behalf of Reynolds. No anti-smoking advocates attended the proceedings, and media presence appeared to be limited to a single print journalist.

The focus of the industry witnesses' testimony was threefold: first, they criticized Cal-EPA's uncritical acceptance of the federal EPA's 1992 Report as the benchmark for California EPA's ETS/lung cancer assessment; second, they rebutted Cal-EPA's claim that the data published since the federal EPA Report are consistent with the findings of that Report; and, third, they disputed Cal-EPA's assertion that the most recent studies address the methodological shortcomings of prior ETS reports.

Cal-EPA officials asked only one question of the industry witnesses and made no attempt to defend or discuss the Agency's findings in light of the witnesses' testimony. At the conclusion of the proceeding, however, one of the Cal-EPA officials claimed that the Agency remains open-minded in analyzing the health effects of ETS and asserted that Cal-EPA will rely heavily on the written and oral comments received from the public in making a final assessment.

Written comments on Cal-EPA's draft chapter on ETS and lung cancer are due on April 1. We intend to submit written comments from Drs. LeVois, Layard, and Gori, as well as additional comments on behalf of TI summarizing (1) the legal and policy reasons why Cal-EPA should delay or discontinue its ETS risk assessment and (2) the scientific data relating to ETS and both lung cancer and heart disease. PM and Reynolds also intend to file written comments. We will provide you with final copies of the TI submissions when they are completed.

Clausen Ely, Jr.
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